

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1366 of 1979

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

VISHVESHWARDASJI GURU

Versus

DELETED AS PER COURT'S ORDER

Appearance:

MR SC SHAH for MR SN SHELAT for Petitioner
MR SUDHANSU PATEL, AGP< for Respondent No. 2

CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 31/03/2000

ORAL JUDGEMENT

The facts and circumstances in which the present
appeal has arisen are as under:

2. There is a public charitable trust known as Narsinhji Temple Trust, which has been registered at Surat at No. A/1946. The trust is having a temple at Navagam, Dist. Surat. An application was received by the Asst. Charity Commissioner, Surat, on 25.7.1970 from some of the trustees of the said trust alleging that Vishveshvardasji Guru Gopaldasji, who was the Mahant and one of the trustees of the trust, had misappropriated funds of the trust by not accounting for the amount of rent received from certain tenants of the trust property. Upon receipt of the said application, the Asst. Charity Commissioner, Surat, had deputed an Inspector working in his office to enquire whether there was any substance in the allegations levelled against Mahant Vishveshvardasi Guru Gopaldasji (hereinafter referred to as 'the Mahant'). The Inspector was also to submit his report under the provisions of sec. 37 of the Bombay Public Trusts Act, 1950 (hereinafter referred to as 'the Act').

3. The Inspector had made necessary enquiry and had recorded statements of several witnesses and he submitted his report to the effect that on the land belonging to the trust, there were 19 huts. The Mahant was not passing receipts to 19 hutment dwellers staying in those huts and was also not showing the amount of rent received from those persons in the books of accounts of the trust. He made his report under sec. 37 of the Act to the Asst. Charity Commissioner stating that the Mahant had misappropriated a sum of Rs. 4557/-. Upon receipt of the report, the Asst. Charity Commissioner, made a preliminary inquiry and came to a conclusion that the Mahant had misappropriated a sum of Rs. 4557/- and submitted his report to the Charity Commissioner under section 39 of the Act. The Jt. Charity Commissioner had issued a notice to the Mahant calling upon him to show cause as to why appropriate action should not be taken against him. Ultimately, after hearing the concerned parties and looking to the facts of the case, the Jt. Charity Commissioner, Ahmedabad, had come to the conclusion that there was no misappropriation made by the Mahant but the Mahant had shown negligence in performance of his duties and as a result thereof loss was caused to the trust and, therefore, in Inquiry No. 17/75, the Jt. Charity Commissioner, Ahmedabad, had passed an order to the effect that a sum of Rs. 2000/- be recovered from the Mahant as he had shown gross negligence in performance of his duties.

4. Being aggrieved by the above order passed in Inquiry No. 17/75, the Mahant had filed Misc. Civil Application No. 46/78 in the Court of the Extra Assistant

Judge, Surat, under the provisions of sec. 72 of the Act. After hearing the concerned parties, and upon perusal of the record pertaining to the case, the application was rejected by an order dated 2.7.1979 by the Extra Assistant Judge, Surat. The order passed by the Jt. Charity Commissioner dated 6.1.78 was confirmed and, thus, the Mahant was held guilty of negligence and was made liable to pay a sum of Rs. 2000/-.

5. In the present appeal, the order passed by the Extra Assistant Judge, Surat, dated 2.7.79 has been challenged.

6. It is pertinent to note that during the pendency of this appeal, the Mahant i.e. Vishveshvardasji Guru Gopaldasji expired on 23.3.1988. In the circumstances, Mahant Jagannathji Guru Vishveshvardasji had filed Civil Application No. 4047/94 in the present appeal for substituting himself for the deceased Mahant. The said application was allowed and the present appellant i.e. Mahant Jagannathji Guru Vishveshvardasji has been substituted as an appellant in this appeal.

7. Learned advocate Shri S.C. Shah appearing for the appellant has, at the outset, submitted that as the Mahant expired on 23.3.1988, in fact, the appeal has abated. As per his submission, the amount which was directed to be paid by late Mahant was on account of his negligence and therefore the said amount cannot be recovered from the present appellant, who was also a disciple of the Mahant.

8. It has been submitted by learned advocate Shri Shah that the Jt. Charity Commissioner had directed the Mahant to pay a sum of Rs. 2000/- as he was found negligent. The amount which was to be paid by the Mahant was not in pursuance of any contract. That was only on account of his personal negligence as a trustee of the trust. In the circumstances, without challenging the validity of the order passed by the Asst. Charity Commissioner, Surat, he has submitted that the sum which was directed to be paid by the Mahant cannot be recovered from the present appellant as the appellant was never held to be negligent in performance of his duties. It has been submitted by him that the Mahant had executed his will whereby he had appointed the present appellant as the sole trustee of a trust named Lambe Hanuman Temple Trust. Except the position as a trustee, the present appellant has not inherited anything from the Mahant. It has been therefore submitted by learned advocate Shri Shah that, assuming without admitting, the impugned order passed by the Jt. Charity Commissioner, Ahmedabad dated

6.1.1978, which has been confirmed by the learned Extra Assistant Judge, Surat in Misc. Civil Application No. 46/78 is absolutely legal and proper, the amount of fine or compensation or damages, whatever nomenclature be given to the said amount, cannot be recovered from the appellant for the reason that the said amount was to be paid by the Mahant on account is personal negligence. Moreover, it has been submitted by him that the Mahant has not left any property from which the said amount can be paid. As there is no estate or property left by the deceased Mahant, question of recovering the said amount from the present appellant would not survive at all.

9. In support of his submission, learned advocate Shri Shah has relied upon two judgements delivered by the Hon'ble Supreme Court. He has submitted that in Official Liquidator, Supreme Bank Ltd. v. P.A. Tendolkar (dead) by L.Rs. and others, (1973) 1 SCC 602, applying the maximum "actio personalis moritur-cum-persona", the amount of Rs. 2000/- cannot be recovered from the present appellant. It has been submitted by him that the abovereferred maximum, which has been accepted in principle by the Hon'ble Supreme Court in the case referred to hereinabove, clearly states that if any amount of damages is to be recovered from any person on account of tort committed by him, the amount of damages cannot be recovered from personal assets of his legal heirs. In the instant case, he has submitted that, in fact, the present appellant has not inherited any property from the Mahant.

10. Learned advocate Shri Shah has thereafter submitted that the Hon'ble Supreme Court has also held in case of M. Veerappa v. Evelyn Sequeira and others, AIR 1988 SC 506, that whenever any suit has been filed for the purpose of recovery of any amount based on an action for tort, the suit abates on account of the death of the concerned person. It has been submitted by him that if the amount of claim is founded on tortious liability, the suit would undoubtedly abate and if the action is founded partly on tortious liability and partly on contractual liability, then such part of the claim as it relates to the tortious liability would stand abated and the other part would survive. Looking to the said principle propounded in the judgement referred to hereinabove, it has been submitted by Shri Shah that as the entire amount of Rs. 2000/- is on the basis of the liability founded on negligence and not on contract, the present appellant cannot be held liable to pay the said amount.

11. Thus, it has been submitted by learned advocate

Shri Shah that in any case the appellant cannot be made liable to pay the amount which was directed to be paid by the Mahant. He has fairly submitted that only for the reverence which the present appellant is having for his late 'guru', he got himself substituted in the present appeal, otherwise, in fact, the appeal would have been abated on account of the demise of the Mahant. It has been therefore submitted that the appeal should in fact abate and he should not be made liable to make any payment on account of negligence of the Mahant.

12. Learned A.G.P. Shri Sudhansu Patel appearing for the respondent has fairly submitted that the legal submission made by learned advocate Shri Shah cannot be disputed. It has also been submitted by him that looking to the contents of the will, which was prepared by the Mahant, it is clear that he had not bequeathed any amount to the present appellant and, therefore, it would not be possible for the authorities to recover any amount from the present appellant.

13. Looking to the above referred factual and legal position, in my opinion, the appeal abates, though the present appellant has got himself substituted as the appellant because the present appellant cannot be made liable to make payment of the amount, which was to be paid by the Mahant, namely, Mahant Vishveshvardasji Guru Gopaldasji.

14. In the circumstances, the appeal stands disposed of as it has already abated. Needless to say that the amount which was sought to be recovered from the Mahant cannot be recovered from the present appellant.

(hn)